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SFA BILL ANALYSIS

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House Bill 4811 (Substitute H-3 as passed by the House)
Sponsor: Representative Lauren Hager
House Committee: Insurance and Financial Services
Senate Committee: Financial Services

Date Completed: 11-27-01

CONTENT

The bill would amend the Insurance Code to add certain provisions concerning sureties and fiduciaries, and to replace references to a repealed chapter with references to a similar existing chapter. The bill is tie-barred to Senate Bill 494, which would repeal a statute governing surety companies (Public Act 266 of 1895).

Specifically, the House bill would allow a person and a surety to agree to deposit an asset into a financial institution in a manner that would prevent the person from withdrawing the asset without the written consent of the surety or a court order.

The bill further provides that a person acting in a fiduciary capacity who was required to obtain a bond could include the cost of obtaining it as part of the expense of acting as a fiduciary, if this were allowed by the court to which the fiduciary was required to account. The cost could not exceed 1% annually of the bond amount, or an amount otherwise approved by the Commissioner of the Office of Financial and Insurance Services. The surety on the bond could apply to the court for an order relieving him or her of liability for future acts of the fiduciary. Following notice and a hearing, the court could enter an order excusing the surety from liability arising out of acts or omissions occurring after the date of the order, under terms considered necessary to protect the fiduciary estate and its beneficiaries.

The bill specifies that a person required to furnish a bond could use any surety holding a certificate of authority issued under Chapter 1 of the Code, so long as the amount of the bond did not exceed 10% of its paid-up capital and surplus. Upon payment of the obligation secured by the bond, the surety would be subrogated to the rights of the party to whom the surety made payment, including any security or priority to which the party was entitled. (That is, the surety would be substituted for that party with respect to the party's rights.)

Further, the bill would require that a corporate surety on a bond be released or discharged from its liability on the same terms and conditions as applicable to the release or discharge of individual sureties. A surety would have all the rights, remedies, and relief to which an individual guarantor or indemnitor would be entitled.

Last, the bill would revise chapter references in three sections of the Code that govern proceedings regarding liquidations and delinquencies. Currently, the Code refers to Chapter 78, which was repealed by Public Act 302 of 1989. The bill would refer instead to Chapter 81, which contains similar provisions.

MCL 500.5028 et al. Legislative Analyst: C. Layman

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Tyszkiewicz